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In The
Supreme Court of the United States
October Term, 1994

SHARLENE WILSON,

Petitioner,

v.

STATE OF ARKANSAS,

Respondent.

REPLY BRIEF OF PETITIONER ON PETITION FOR WRIT OF CERTIORARI TO THE ARKANSAS SUPREME COURT

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October 26, 1994

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QUESTION PRESENTED FOR REVIEW

Whether the "knock and announce" rule of the common law is constitutionally mandated under the Fourth Amendment.

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REASONS FOR GRANTING THE WRIT

I.

CERTIORARI SHOULD BE GRANTED TO DETERMINE WHETHER THE "KNOCK AND ANNOUNCE" RULE OF THE COMMON LAW IS A REQUIREMENT OF THE FOURTH AMENDMENT.

A.

The State's argument essentially is that (1) the "knock and announce" requirement is somehow not constitutionally required because of all its exceptions, and (2) petitioner's comment about the number of firearms in this country only underscores the need for

exceptions for destruction of evidence and risk of violence as permitting an announced entry.

As petitioner stated in her brief, the exceptions to "knock and announce" are not before the court; the only question is whether the common law requirement of *Semayne's Case*, 5 Co.Rep. 91a, 77 Eng.Rep. 194 (1603), must be read into the Fourth Amendment. We agreed in the petition that there are valid and important exceptions to the constitutional requirement of "knock and announce" that would still likely be the law. Pet. Cert. at 12-13 & n. 6. In this case we do not expect a code of "knock and announce"; that is not this Court's function. That will have to be developed on a case-by-case basis, and the substantial body of law on the exceptions already discussed in the Petition for Certiorari will certainly be "reasonable" under the Fourth Amendment. So, the State's argument misses the mark.

In this case, no exception was asserted in the trial court or the Arkansas Supreme Court because the State relied on Ark.R.Crim.P. 13.3 which does not even mention "knock and announce."

B.

We agree that the element of surprise in some searches can be imperative, *if*, and this is a BIG if, the police can show a valid reason to overcome the privacy and property interests of the householder they intend to invade with battering rams, guns drawn and cocked, and stun grenades. That is what the current exceptions are for. Both sides cite Miss.Code Ann. § 41-29-157(c) that the rules are different in drug cases. We cite

numerous statutes in note 11 to the Petition permitting "no knock" warrants in drug cases. *See also State v. Stevens*, 181 Wis.2d 410, 511 N.W.2d 591, 594-95 (1994) (drug cases are *per se* exigent circumstances for an exception to "knock and announce"). Such a per se rule, however, may be too broad, and that can be dealt with under the exceptions and how the Court approaches this case if it grants certiorari.

The element of surprise, however, is subject to great abuse and greater danger to citizens *and* police. The anecdotal evidence is mounting. Ironically, the December 1994 PLAYBOY magazine on newsstands the week this reply brief is filed provides a parade of horribles of citizens and police shot and killed or seriously wounded during raids by overzealous police officers. James Bovard, *Oops—You're Dead; The Body Count From No-Knock Drug Raids is Climbing. Are You Next?*, PLAYBOY 50-51 (Dec.1994), in the Appendix at A-1. Police officers and citizens are dying because the police generally have such a cavalier attitude toward the privacy of the home that is so paramount in American jurisprudence. *Payton v. New York*, 445 U.S. 573, 591 & n.33 (1980); *Steagald v. United States*, 451 U.S. 204, 217 (1981). This case could provide the impetus to but the brakes on and look anew at what is becoming a growing problem.

When *Semayne's Case* was decided in 1603, firearms had not yet even been invented. Yet, the requirement of "knock and announce" to prevent violence against the officers and homeowner was significant enough then to be a part of the common law. So, how far have we come? Yes, there is danger in announcement. There can be greater danger in *not* announcing. In drug cases, would not a holder of a cache of drugs and drug

money fear robbery more than the police? At least the police will not kill them to take their drugs and money. Also, when the house is surrounded, where will the suspect go? If the officers really feel threatened by violence, they can tear gas the house and end it all without bloodshed.

CONCLUSION

The issue is significant and ripe for decision. The petition for writ of certiorari should be granted.

Respectfully submitted,

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October 26, 1994

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OOPS— YOU'RE DEAD

the body count from no-knock drug raids is climbing. are you next?

By JAMES BOVARD

On March 25 of this year, 13 heavily armed Boston police wearing fatigue outfits smashed into the apartment of a 75-year-old retired minister, the Reverend Accelynne Williams. Williams ran into his bedroom when the raid began, but police smashed down the bedroom door, shoved Williams to the floor and handcuffed him. Williams may have had up to a dozen guns pointed at his head during the scuffle. Minutes later, Williams died of a heart attack. No drugs or guns were found in Williams' apartment. The police had carried out the raid based on a tip from an unidentified informant who said that there were guns and drugs in the building but did not give a specific apartment number. A policewoman simply took the informant's word, did a quick drive-by of the building, got a search warrant and then gave the go-ahead to her fellow officers to charge. An editorial in *The Boston Globe* later observed, "The Williams tragedy resulted, in part, from the 'big score' mentality of the centralized Boston Police Drug Control Unit. Officers were pumped up to seize machine guns in addition to large quantities of cocaine and a 'crazy amount of weed,' in the words of the informant."

The Boston police commissioner apologized.

The press coverage made the event look like an isolated tragedy in the war on drugs. It was not.

No-knock police raids destroy Americans' right to privacy and safety. People's lives are being ruined or ended as a result of unsubstantiated assertions by anonymous government informants.

As early as 1603, English courts recognized that law officers were obliged to knock and announce their purpose before entering a citizen's home. Early American courts, such as the New York Supreme Court in 1813, adopted similar requirements.

Unfortunately, contemporary law enforcement practice does not reflect the patience or respect for individual rights that the founding fathers had. Police do not keep statistics on warrants served at the wrong address or of the innocent bystanders killed or maimed in the war on drugs. But a search of newspaper files turns up a litany of law enforcement agencies gone berserk.

At two A.M. on January 25, 1993, police smashed down the door and rushed into the home of Manuel Ramirez, a retired golf course groundskeeper living in Stockton, California. Ramirez awoke, grabbed a pistol and shot and killed one policeman before other officers killed him. The police were raiding the house based on a tip that drugs were on the premises, but they found no drugs.

County Sheriff's Lieutenant Dan Lewis later tried to justify the raid's methods: "Our problem is that a lot of times we're dealing with drug dealers, and their thought processes are not always right from the start. That's when things get real dangerous for us."

Police told reporters the next day that, though the drug raid was a complete failure, they did find $8500 in cash—much of it in $50 and $100 bills, which the police asserted was consistent with drug dealers' cash-handling methods. Maria Ramirez, Manuel's daughter, said that the money was from the family business of selling jewelry at flea markets. She had receipts to prove it.

•

On August 25, 1992, officials from the U.S. Customs Service and the DEA, along with local police, raided the San Diego home of businessman Donald Carlson, setting off a bomb in his backyard (to disorient Carlson), smashing through his front door and shooting him three times after he tried to defend himself with a gun. Police even shot Carlson in the back after he had given up his gun and was lying wounded on his bedroom floor. Amazingly, Carlson survived the raid.

The Customs Service mistakenly believed that there were four machine guns and a cache of narcotics in Carlson's home. Carlson related in congressional testimony in 1993 that even after agents failed to find any drugs, "No one offered me medical assistance while I lay on the floor of my bedroom. Eventually, paramedics arrived and took me to the hospital. I was shackled and kept in custody under armed guard for several days at the hospital.



During that time, I was aware of hospital personnel referring to me as a criminal and of police officers and agents coming into my room."

The raid was based on a tip from a paid informant named Ron, who later told the *Los Angeles Times* that he had never formally identified a specific house to be searched.

Customs officials had Carlson's home under surveillance for many hours before they launched the raid. The agents could easily have arrested Carlson when he arrived home at ten P.M. but instead watched and waited to attack until after midnight, when

Carlson was asleep, in order to maximize the surprise. Although they had a search warrant based on the house being a drug storehouse, agents carried out the raid even after it became obvious that Carlson was living a normal life there.

The government finally admitted limited liability for Carlson's medical costs in March 1994, but the chief federal prosecutor, Alan Bersin, simultaneously hailed the "courageous law enforcement efforts in the area of drug interdiction" involved in the case. "The tragedy for everyone involved is that no one acted other than in good faith," Bersin asserted. "We were deceived by our informant and must accept responsibility for that."

Bersin's statement implies that when federal agents launch a raid on someone's home based solely on an allegation by a government informant, a "tragedy" occurs only when the informant deceives the agents. The Justice Department has indicated that no federal agents will be prosecuted for their actions before, during or after the raid.



In March 1992 a police SWAT team in Everett, Washington killed Robin Pratt in a no-knock raid while carrying out an arrest warrant for her husband. (Her husband was later released after the allegations on which the arrest warrant was based turned out to be false.) *The Seattle Times* summarized the raid:

"Instead of using an apartment key given to them, SWAT members threw a 50-pound battering ram through a sliding-glass door that landed near the heads of Pratt's six-year-old daughter and five-year-old niece. As deputy Anthony Aston rounded the corner to the Pratts' bedroom, he encountered Robin Pratt. SWAT members were yelling, 'Get down,' and she started to crouch to her knees. She looked up at Aston and said, 'Please don't hurt my children.' Aston had his gun pointed at her and fired, shooting her in the neck. According to attorney John Muenster, she was alive another one to two minutes but could not speak because her throat had been destroyed by the bullet. She was then handcuffed, lying facedown."

In 1991 Garland, Texas police dressed in black and wearing ski masks burst into a mobile home, waving guns. They kicked down the door of a bedroom that Kenneth Baulch shared with his 17-month-old son. The police found Baulch holding an object in his hand. A policeman shot and killed Baulch. The object turned out to be an ashtray. The police say Baulch was advancing on them. The subsequent lawsuit contends he was shot in the back.

In 1989 Titusville, Florida policemen conducted a nighttime no-knock drug raid on the home of a 58-year-old painter, Charles DiGristine. The raid began as the police set off a concussion grenade and smashed through DiGristine's front door. When DiGristine's wife screamed, he hurried to his bedroom to get a pistol. A policeman dressed in dark clothing and a black mask crashed into his bedroom, gunfire was exchanged and the officer was killed. The local government prosecuted DiGristine for first-degree murder, but a jury acquitted him. (The police believed—based on bogus information from an anonymous informant—that the DiGristine home was a center for heavily armed drug dealers. The only drug they found in the raid was a small amount of marijuana owned by DiGristine's 16-year-old son.)

DEA agents used an ax to break down the door of an innocent man's home in Guthrie, Oklahoma in 1991 and then handcuffed and kicked the man in front of his wife and daughters before the agents realized they were at the wrong address. They left without apologizing.

Unfortunately, no-knock raids are becoming more common as federal, state and local politicians and law enforcement agencies decide that the war on drugs justifies nullifying the Fourth Amendment. As Charles Patrick Garcia noted in a 1993 *Columbia Law Review* article, "Seven states, favoring strong law enforcement, have chosen a 'blanket approach,' which holds that once police have established probable cause to search a home for drugs, they are not required to follow the constitutional knock-and-announce requirement."

Even liberal states are jumping on the no-knock bandwagon. The Wisconsin Supreme Court ruled in February that police could forcibly enter a home without knocking in any case in which there was "evidence of drug dealing." Unfortunately, "evidence of drug dealing" can be the uncorroborated assertion of a single anonymous paid government informant. The Wisconsin court said that the "possibility for violence" can be minimized by allowing police to rely on "unannounced, dynamic entry"—though it's a good bet that the judges don't expect police to carry out such raids in the judges' neighborhoods.

Even in states where search warrants require a knock on the door before entry, police routinely disregard that formality. In a 1991 corruption trial, a former Los Angeles policeman testified that the accused officers falsely reported that they had complied with the knock-and-announce rule. In reality they violated the rule in 97 percent of the search warrants they executed.

No-knock raids in response to alleged narcotics violations presume that the government should have practically unlimited power to endanger some people's lives in order to control what others ingest. The right to batter down a door apparently includes the right to kill any citizen who tries to stop the police from forcibly entering his or her home.

The ACLU and the National Rifle Association have jointly called for President Clinton to appoint a commission to investigate "lawlessness in law enforcement." Better yet, Congress should establish explicit rules to limit the arbitrary and violent behavior of federal agents carrying out searches and raids, and state legislatures should repeal their laws granting unlimited no-knock-search powers to police in their jurisdictions.

James Bovard is author of "Lost Rights: The Destruction of American Liberty."

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AFFIDAVIT OF MAILING

I, John Wesley Hall, Jr., counsel for petitioner, swear under penalty of perjury that I mailed 11 copies of the Reply to the Brief in Opposition to the Clerk of the U.S. Supreme Court this 26th day of October, 1994.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, John Wesley Hall, Jr., counsel for petitioner, certify that I served a copy of the Reply to the Brief in Opposition on Clint Miller, Deputy Attorney General, 323 Center Street, Suite 200, Little Rock, Arkansas 72201, this 26th day of October, 1994 by first class mail or personal service.

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